

CCRB INVESTIGATIVE RECOMMENDATION

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|--|--|--|---|------------------------------------|---------------------------------|
| Investigator: Tessa Yesselman | Team: Squad #4 | CCRB Case #: 202102281 | <input type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Friday, 10/23/2020 12:42 PM | Location of Incident: 9th Precinct stationhouse | Precinct: 09 | 18 Mo. SOL 4/23/2022 | EO SOL 5/4/2022 | |
| Date/Time CV Reported Fri, 04/09/2021 3:12 PM | CV Reported At: CCRB | How CV Reported: Call Processing System | Date/Time Received at CCRB Fri, 04/09/2021 3:12 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |

| Subject Officer(s) | Shield | TaxID | Command |
|---------------------|--------|--------|---------|
| 1. SGT Omar Elsayed | 02422 | 950376 | 009 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|---------------------------|-----------|--------|----------|
| 1. POM Christophe Joyce | 28319 | 945862 | 009 PCT |
| 2. POM Nicholas Mcpherson | 21212 | 968001 | 009 PCT |
| 3. LT Meghan Diani | 00000 | 941656 | 009 PCT |
| 4. POM David Tague | 03566 | 953464 | 009 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|-----------------------|--|-----------------------------|
| A.SGT Omar Elsayed | Abuse: Sergeant Omar Elsayed strip-searched § 87(2)(b) | |
| § 87(2)(g), § 87(4-b) | | |

Case Summary

On April 14, 2021, § 87(2)(b) filed this complaint with the CCRB via the call processing system (**01 Board Review**).

On October 23, 2020, § 87(2)(b) was arrested for criminal possession of a controlled substance and taken to the 9th Precinct stationhouse in Manhattan (**02 Board Review**). Sergeant Omar El Sayed of the 9th Precinct strip searched § 87(2)(b) (**Allegation A, Abuse of Authority: § 87(2)(g)** § 87(2)(b)).

§ 87(2)(b)

The CCRB obtained body worn camera footage of this incident (**05 Board Review**).

Findings and Recommendations

Allegation (A) Abuse of Authority: Sergeant Omar Elsayed strip-searched § 87(2)(b)

§ 87(2)(b) stated (**03 Board Review**) that he was arrested for possession of a controlled substance and that he was carrying opioids in his right jacket pocket at the time of his arrest. These opioids were discovered by officers when they frisked him prior to placing him into a police vehicle. § 87(2)(b) did not have any other contraband on his person. § 87(2)(b) was transported to the 9th Precinct stationhouse and was searched in front of the desk. After that search, several officers brought him into a rear cell area. An officer told § 87(2)(b) that he was going to strip search him and instructed him to take off all of his clothes, kneel on the floor, and “spread them.” § 87(2)(b) complied. The officers observed § 87(2)(b) body and did not make physical contact with him. No further contraband was found. The officers instructed § 87(2)(b) to put his clothes back on and then placed him in a holding cell.

Sgt. El Sayed (**09 Board Review**), Police Officers Nicholas McPherson (**06 Board Review**) and David Tague (**08 Board Review**), and Lieutenant Megan Diani (**07 Board Review**) all stated that § 87(2)(b) was not strip searched and was never instructed to take his clothing off.

Body worn camera footage does not show § 87(2)(b) being instructed to take his clothing off. Body worn camera footage from PO Tague shows Sgt. El Sayed search § 87(2)(b) in front of the holding cells (**05 Board Review**).

The BWC file is labeled 2020-10-23-12-59.18.

At 5:45 § 87(2)(b) stands up. PO Tague is to the left of him. Sgt. El Sayed is standing in front of him.

At 5:56 Sgt. El Sayed says “I’m not touching you. I’m not touching your dick. Relax.”

5:59 Sgt. El Sayed unbuckles § 87(2)(b) belt.

6:12 Sgt. El Sayed unzips § 87(2)(b) pants. A layer of light clothing is visible under the pants. At 6:14 Sgt. El Sayed appears to open a flap in the light layer of clothing.

At 6:17 § 87(2)(b) says “come on, bro.” Sgt. El Sayed points his finger at § 87(2)(b) and says, “My man, let me search. Let me do what I gotta do. I’m not touching your dick. Relax.” § 87(2)(b) says, “Come on, that’s not a search my man.”

At 6:23 Sgt. El Sayed holds the flap of the light layer of clothing open and looks inside. § 87(2)(b)

says, “Yo my man, that’s not a search my man.” Sgt. El Sayed holds the flap open with one hand and with his other hand points his finger at § 87(2)(b) and says, “Listen.” § 87(2)(b) says, “That’s a search? Go ahead, search, search, search. Go ahead.” Sgt. El Sayed continues to look in the flap. At 6:32 Sgt. El Sayed says, “You have too many underwears on,” and pulls § 87(2)(b) pants down around his buttocks. § 87(2)(b) says, “You’re not searching my underwears bro. You’re not searching.” Sgt. El Sayed puts his hands around § 87(2)(b) waist and says, “That’s not how it’s working.” § 87(2)(b) says, “No, it’s not, because I just got sexually harassed. No it’s not, no it’s not.”

At 6:40 § 87(2)(b) sits down. § 87(2)(b) and Sgt. El Sayed speak loudly about continuing the search or not continuing the search. They speak over each other and the audio is unintelligible.

At 7:00 § 87(2)(b) says, “You say you’re going to get drugs out of here. You say you’re going to get drugs out of here, is that right?”

At 7:10 Sgt. El Sayed says, “Let me do what I gotta do. Let me do what I gotta do.”

At 7:22 § 87(2)(b) looks at his right waist and pushes his arm against his right waist and says, “Take the drugs out.”

At 7:25 Sgt. El Sayed says, “That’s not how it works bro. Let me search. That’s it. If you have nothing you have nothing.”

At 7:38 Sgt. El Sayed says, “You want to go in the bathroom? Where no one can see?” § 87(2)(b) responds, “Do your fucking search, bro.”

The screen cuts off the bottom of § 87(2)(b) body. His body is not visible past the line of his t-shirt. At 7:43 Sgt. El Sayed appears to pull the light layer of clothing which was under § 87(2)(b) jeans down. At 7:47 Sgt. El Sayed makes a motion downwards with his hand. Sgt. El Sayed is reaching towards the left side of the screen. At 7:48 Sgt. El Sayed moves to the other side of § 87(2)(b) body.

At 7:54 § 87(2)(b) says, “You’re looking at my fucking dick bro, what is wrong with you?”

At 7:58 Sgt. El Sayed continues to the right side of the screen.

At 8:00 Sgt. El Sayed stands up and says, “Pa pa, I’m not looking at your dick.”

At 8:06 Sgt. El Sayed is on the right side of the screen, towards the rear of § 87(2)(b) body. Sgt. El Sayed says, “There we go. I got it. There we go, I got it. It’s done.”

At 8:14 § 87(2)(b) says, “What’s that?” Sgt. El Sayed responds, “It looks like drugs to me.” § 87(2)(b) says, “Oh yeah? You put that there.” At 8:22 Sgt. El Sayed hands a small white object to PO Tague. At 8:28 Sgt. El Sayed holds the light layer of clothing out away from § 87(2)(b) body. Sgt. El Sayed and § 87(2)(b) speak in Spanish. At 8:39 Sgt. El Sayed continues searching on the right rear side of § 87(2)(b) body. § 87(2)(b) has his pants down, and there is a white layer of clothing and a light blue layer of clothing, both of which were under § 87(2)(b) pants visible. At 9:00 Sgt. El Sayed moves to the left rear side of § 87(2)(b) body, and at 9:30 frisks § 87(2)(b) waist. At 9:37 Sgt. El Sayed instructs § 87(2)(b) to take his shoes off. At 9:48 PO Tague pulls § 87(2)(b) pants back up and fastens them. At 14:30 § 87(2)(b) is placed in a holding cell.

Sgt. El Sayed stated (09 Board Review) that he did not strip search § 87(2)(b) Sgt. El Sayed’s understanding of a strip search is that an individual is made to remove all of their clothes. Sgt. El Sayed’s search of § 87(2)(b) was conducted in the rear cells. PO Tague was present during the search. A civilian person was also present during the search and that civilian was lodged in one of the holding cells while the search happened. An officer found narcotics on § 87(2)(b) at the location of his arrest. Sgt. El Sayed did not know who the officer was and did not know where the contraband was on § 87(2)(b) person. Sgt. El Sayed was not present during § 87(2)(b) transport to the 9th Precinct stationhouse. Sgt. El Sayed did not observe § 87(2)(b) making any motions towards any part of his body and did not observe any bulges or irregularities on § 87(2)(b) person. § 87(2)(b) was wearing multiple layers of clothing under his pants. Sgt. El Sayed did not recall specifically how many layers. Sgt. El Sayed discovered § 87(2)(b) was wearing multiple layers while patting him down over his clothes because he could feel the layers. Sgt. El Sayed had

to search § 87(2)(b) thoroughly before he was lodged in a holding cell for his safety, the safety of other officers, and the safety of the civilian who would be in the holding cell with him, and to see if he had any further contraband. Since § 87(2)(b) was wearing multiple layers of clothing under his pants, Sgt. El Sayed searched through each layer by patting down over each one. Sgt. El Sayed did not make contact with § 87(2)(b) skin and § 87(2)(b) genitals were not in view during the search.

Sgt. El Sayed's search of § 87(2)(b) was not noted on § 87(2)(b) arrest report (02 Board Review) or in the command log (04 Board Review).

Patrol Guide Procedure 208-05 (10 Board Review) states:

(1) Upon arrival at precinct of arrest or other Department facility, the arresting officer (if he/she is of the same gender as prisoner) or another designated member of the same gender as the prisoner, shall conduct a thorough search of the prisoner's person and clothing to ensure the safety of all persons within the facility and to remove weapons, contraband, and evidence not discovered by the frisk. Other items lawfully carried but that are dangerous to life, may facilitate escape, or may be used to damage Department property will also be removed from the subject.

(2) A search at a police facility, which is not the same as a "strip search," includes the removal of outer garments (e.g., overcoats, jackets, sweaters, vests, hats, wigs, ties, belts, shoelaces, drawstrings, shoes, socks, handbags, wallets, etc.). All pockets are to be emptied and all clothing not removed will be examined by grabbing, crushing, and squeezing the garments and by sliding the hands across the body to detect articles that may be underneath or sewn to the clothing.

The procedure defines a strip search as:

Any search in which an individual's undergarments (e.g., bra, underwear, etc.) and/or private areas are exposed or in which an individual's clothing is removed, lifted up, or pulled down to expose undergarments or private areas. A strip search of a prisoner may not be conducted routinely in connection with an arrest. Strip searches may only be conducted with the knowledge and approval of the arresting officer's immediate supervisor or the borough Court Section supervisor. A strip search may only be conducted when the arresting officer reasonably suspects that weapons, contraband, or evidence may be concealed upon the person or in the clothing in such a manner that they may not be discovered by the previous search methods.

§ 87(2)(g)

Sgt. El Sayed acknowledged lifting up and pulling down layers of § 87(2)(b) clothing. Body worn camera footage shows that § 87(2)(b) undergarments were visible during the search. Furthermore, the search was conducted in front of the holding cells, a public setting, and with another civilian person present. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**11 Board Review**).
- Sgt. El Sayed has been a member of service for ten and has been a subject in 21CCRB complaints and 44 allegations, of which five were substantiated:
 - 201401094 involved substantiated allegations of a frisk and a discourtesy. The Board recommended charges and the NYPD imposed a forfeit of two vacation days.
 - 201403333 involved substantiated allegations of a vehicle search and discourtesy. The Board recommended instructions and the NYPD imposed formalized training.
 - 201410712 involved substantiated allegations of premises entered and searched. The Board recommended command discipline A and the NYPD imposed command discipline A.
 - Sgt. El Sayed has one previous strip search allegation, which was administratively closed.

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of October 8, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (**13 Board Review**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: _____ 4 _____

Investigator: _____ SI Tessa Yesselman _____ 10/18/2021 _____
Signature Print Title & Name Date

Squad Leader: _____ IM Raquel Velasquez _____ 10/22/2021 _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date